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17 JAN 2008

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In re Application of CLAYTON et al.

Application No.: 10/561,713

PCT No.: PCT/GB04/02707

Int. Filing: 23 June 2004

Priority Date: 23 June 2003

Attorney Docket No.: 5585-72843-01

For: INFLAMMATORY DISEASE TREATMENT :

DECISION ON PETITION

UNDER 37 CFR 1.47(a)

This is a decision on applicant's petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 14 November 2007, to accept the application without the signature of joint inventor REBECCA RUTTER. Applicant's request for an extension of time (4 months) is granted and charged to their deposit account per their authorization.

BACKGROUND

On 21 December 2005, applicant filed a transmittal letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee.

On 07 April 2006, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating *inter alia*, that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) was required.

On 07 November 2006, applicant filed a petition along with a declaration, executed by the joint inventor on behalf of the nonsigning inventor. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signature of the joint inventor alleging that Ms. Rutter refuses to sign the application.

On 14 May 2007, a decision dismissing the petition was mailed indicating that Petitioner had failed to provide factual proof that the non-signing joint inventor(s) refused to execute the application or could not be reached after diligent effort.

On 14 November 2007, Petitioner filed a renewed petition.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application

or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Items (1), (3) and (4) were previously satisfied.

With respect to Item (2) above, Petitioner provided the affidavit of Kate Taylor, patent attorney with the law firm of Harrison Goddard Foote, counsel for the assignee, Advanced BioNutrition Corporation, in support of the petition under 37 CFR 1.47(a). Ms. Taylor states, based on personal knowledge, she sent the nonsigning inventor's attorney directly a complete copy of the application (including the specification, claims, drawings and declaration) for signature by Rebecca Rutter. Thereafter, Ms. Taylor received a telephone call and a letter from Ms. Rutter dated 08 November 2007. Her letter states that she "will not sign this document" for various reasons given. This is sufficient evidence to conclude that the non-signing inventor refuses to sign the application papers.

In sum, Petitioner has satisfied Items (1) - (4) above. For the reasons set forth above, the evidence submitted supports a finding that the nonsigning inventor refuses to sign the application at this time. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

The petition under 37 CFR §1.47(a) is **GRANTED**.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 07 November 2006. The application has an international filing date of 23 June 2004 under 35 U.S.C. 363, and a date of 07 November 2006 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.



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